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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/766,539

**Applicant(s)**

DVORAK, ROBERT E.

**Examiner**

Beth Van Doren

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23, 116 and 120-127 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23, 116 and 120-127 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/03/07 has been entered.

Claims 1 and 120-7 have been amended. Claims 1-23, 116, and 120-127 are pending.

### ***Response to Amendment***

2. Applicant's amendment to claim 126 is sufficient to overcome the 35 USC 112, second paragraph, rejections set forth in the previous office action.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 120-125 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 120-125 depend from claim 126 and recite "wherein the presentation demand type selected". There is insufficient antecedent basis for this limitation in each of the claims. In each instance, the limitation has been construed as wherein a setting for the presentation demand type selector causes.

*Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 4-7, and 10-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Landvater (U.S. 6,609,101).

As per claim 1, Landvater teaches an improved management decision support system, including a computer system having memory and resources, a retail demand forecasting program applying one or more forecasting approaches, running on the computer system and generating output, and a set of analysis programs, running on the computer system and utilizing the output, said analysis programs generating at least one of (a) order of goods from a supplier-related data, (b) allocation of the goods to be shipped by the supplier-related data, or (c) distribution of goods to selling locations-related data (See figures 1, 2, 5, 9, and column 8, lines 9-40), the improvement comprising:

a presentation demand calendar utilized by the forecasting program to generate the output, said presentation demand calendar associating with a plurality of good-selling location pairs, data including a good identifier, a selling location identifier, one or more presentation quantities each associated with a start date and a stop date, and a presentation demand type selector that selects one of a plurality of alternative extents to which the good can be sold out of

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the presentation quantity between the start and the stop date (See figures 14, 15, 18, and 22, column 6, lines 45-60, column 8, lines 15-38, column 14, lines 25-50, column 17, lines 45-57, column 19, lines 9-17, and column 21, lines 15-25, wherein a presentation demand calendar is used with the forecasting program to determine stock and replenishment for each of the retail locations. Schedules of dates associated with presentations, replenishments, etc. are stored in the system. The products are stored on a per product per location basis (i.e. identifying the retail store and product to be at that retail store). Shelf configurations (i.e. presentation treatment) and quantities needed for these configurations are stored in the system with a start date and the next start date for a future configuration, the start date for the future configuration being a stop date for the current configuration); and

one or more additional analysis programs in the set of analysis programs generating at least two of: open to buy analysis, markdown management analysis, or promotional forward buying analysis, (See figures 19-21 and column 17, lines 5-55, which disclose promotions planning. See figure 2 and column 20, lines 30-50, which discusses OTB management by considering the financials and inventory budget).

As per claim 4, Landvater teaches wherein the start dates and stop dates for the one or more presentation quantities define non-overlapping periods (See column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 19, lines 5-17, wherein a presentation ends when another begins in the planning of the system for the same item).

As per claim 5, Landvater teaches wherein the start dates and stop dates for the one or more presentation quantities define overlapping periods (See figures 14, 15, 18, column 6, lines 45-60, column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column

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23, lines 45-65, wherein start and stop dates exist for different products thought the system and therefore the presentation of product A and product B would differ, and thus, overlap).

As per claims 6-7, Landvater teaches wherein the good identifier associated with good-selling location pairs includes a good number and a good description and Landvater also teaches a good description table (See column 8, lines 5-25, wherein the good identifier includes the good number on hand and a product description, which are stored in the database).

As per claims 10-12, Landvater teaches wherein the set of analysis programs is adapted to basic retail goods, to seasonal retail goods, and to fashion retail goods (See column 10, lines 30-45, column 12, lines 9-40, column 15, lines 25-50, and column 19, lines 5-20, wherein the program considers basic goods, retail goods, and seasonal goods of retailers).

As per claim 13, Landvater teaches wherein the set of analysis programs operate on daily or more frequent period forecasts (See figure 8, column 10, lines 20-50, column 13, lines 30-36 and 49-58, which discusses daily forecasts).

As per claim 14, Landvater teaches wherein the set of analysis programs operate on weekly forecasts (See figure 8, column 10, lines 20-50, column 11, lines 1-25, and column 21, lines 15-35, which discuss weekly forecasts).

As per claim 15, Landvater teaches wherein the additional analysis programs operate on pairings of individual goods in individual selling locations (See column 8, lines 5-25, column 11, lines 20-32, column 17, lines 35-57, column 19, lines 5-17, column 23, lines 45-65, which discuss goods at individual locations).

As per claim 16, Landvater teaches wherein the additional of analysis programs report aggregated groups of goods in individual selling locations (See column 5, lines 1-5, column 8,

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lines 5-25, column 11, lines 20-32, column 15, lines 25-45 and 55-65, column 23, lines 45-65, which discuss groups of goods).

As per claim 17, Landvater discloses wherein the additional analysis programs report aggregated individual goods in groups of selling locations (See column 5, lines 1-5, column 6, lines 45-60, column 8, lines 5-25 and 50-65, column 11, lines 20-32, which discuss individual goods at multiple selling locations, and overriding occurs).

As per claim 18, Landvater teaches wherein the additional analysis programs report aggregated groups of goods in groups of selling locations (See column 5, lines 1-5, column 6, lines 45-60, column 8, lines 5-25 and 50-65, column 11, lines 20-32, column 15, lines 25-45 and 55-65, wherein goods are grouped and projected across the retailers).

As per claim 19, Landvater teaches wherein the analysis is displayed on a monitor in communication with the computer system (See figures 4 and 22, column 7, lines 35-50, column 21, lines 15-35, which discusses a monitor in connection with the system).

As per claim 20, Landvater teaches wherein the analysis is saved in spreadsheet file format (See column 21, lines 15-40, which teaches spreadsheets).

As per claim 21, Landvater discloses wherein the analysis is printed on paper, microfiche, or optical media (See column 7, lines 35-50, wherein the analysis is placed on optical media).

As per claim 22, Landvater teaches wherein the analysis is distributed by e-mail or other messaging facility (See figure'3, column 7, line 50-column 85 and 25-45, column 21, lines 15-34 and 41-50, column 22, lines 30-55, wherein the forecasting and other analysis is transmitted in a client server environment).

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As per claim 23, Landvater teaches wherein the analysis generated by the additional analysis programs is utilized ~ input to an additional process (See figures 2 and 22, column 7, lines 35-50, column 20, lines 30-50, wherein the analysis is used with other analyses).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-3 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landvater (U.S. 6,609,101).

As per claims 2 and 3, Landvater teaches wherein the start date is stored explicitly and the stop date is stored implicitly and associated with a memory location in which the presentation quantity is stored (See column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 19, lines 5-17, wherein the start date is explicitly stored and the stop date is implicitly stored).

However, Landvater does not expressly disclose that the start date is implicitly stored and that the stop date is explicitly stored.

Landvater discloses shelf configurations (i.e. presentation type) and quantities needed for these configurations are stored in the system, wherein the start date for the current configuration is stored, as well as the next start date for a future configuration, and thus the future date is the stop date of a current configuration. Landvater discloses the importance of the system knowing

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the dates for specific shelf configuration so that the system may functionally plan for such events. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to store start and stop dates so that they are known to the system, whether implicit or explicitly, in order to more efficiently maintain attractive displays by more accurately calculating the needed stock to support the display during the display period. See column 14, lines 25-35 and 55-65 of Landvater.

As per claims 8-9, Landvater teaches a selling location identifier associated with good-selling location pairs includes a selling location number and a selling location description, and further includes a selling location description table and that the store is part of a retail chain (See column 8, lines 5-25 and 35-40, column 9, lines 3-27, column 24, lines 15-35, which discloses good/location combinations stored in the database for replenishment planning).

However, does not expressly disclose that the location is identified by number and description.

Landvater teaches a system that stores good/location combinations in the database, the retail stores of Landvater being part of a chain of stores. Examiner takes official notice that it is old and well known in the art that chain stores have location numbers associated with them for identification reasons. Further, it is also well known that chain stores have a location description associated with them, such as address details. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to identify the location of Landvater using number and description in order to efficiently distinguish between retail stores in the same retail chain.

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8. Claim 116 is rejected under 35 U.S.C. 103(a) as being unpatentable over by Landvater (U. S. 6,609,101) in view of Display Unlimited ([www.displayunlimited.com](http://www.displayunlimited.com)).

As per claim 116, Landvater teaches wherein the presentation demand calendar further includes: a schedule of different displays including display identifiers for a plurality of display types present at particular selling locations (See column 14, lines 25-58, wherein different displays are scheduled, such as shelves and floor models); and

one or more presentation quantity tables, the presentation quantity tables associating with a plurality of good-selling location pairs, data including the display identifier, the good identifier, the selling location identifier, and the one or more presentation quantities each associate with the start and stop dates (See figures 14, 15, 18, and 22, column 6, lines 45-60, column 8, lines 15-38, column 14, lines 25-50, column 17, lines 45-57, column 19, lines 9-17, and column 21, lines 15-25, wherein schedules of dates associated with presentations, replenishments, etc. are stored in the system. The products are stored on a per product per location basis (i.e. identifying the retail store and product to be at that retail store). Shelf configurations (i.e. presentation type) and quantities needed for these configurations are stored in the system, wherein the start date is stored, as well as the next start date for a future configuration, and thus the stop date of a current configuration. Further, display, types are discussed, such as a shelf or a floor model).

However, while Landvater discloses a number of shelf configurations, shelves versus floor displays, and storing information concerning the shelves and displays in the system, Landvater does not expressly disclose specific display fixtures including fixture identifiers and quantities of the fixture, or data including a fixture identifier associated with the PQ tables.

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Display Unlimited discloses different types of display fixtures and using these identified fixtures in retail environments (See pages 1, 4, and 5).

Landvater discloses alternative treatments of presentation demand (i.e. different shelf configurations) as well as different types of display (shelves and floor models). Landvater stores information concerning these presentations and displays in the system. Examiner points out that different fixtures types and the scheduling of different fixture types for store resets and remodels are well-known in the retail industry. Examiner further points out the recitation of display fixtures is non-functional data since the data is merely being stored, and therefore the system is capable of storing such data, regardless of what the data represents. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include data representing the fixture types of Display Unlimited in the data already stored by Landvater concerning displays and shelves in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

9. Claim 120-127 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huang et al. (U.S. 6,151,582) in view of Landvater (U. S. 6,609,101).

As per claim 126, Huang et al. teaches a computer-implemented method of generating reports from simulated unit inventory and unit sales on a bottom-up per location basis for a multitude of items at a plurality of locations, including:

modeling with a presentation demand calendar, which is a data structure stored in computer readable memory, a plurality of retail events having demand types that have differing

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impacts on quantity requirements, wherein a presentation event data tuple for a retail event in the demand calendar includes at least a good identifier for a good, a selling location identifier for a selling location, a demand type selector, and at least one presentation quantity associated with a start date and a stop date for the retail presentation event (See column 13, lines 27-35, column 18, line 45-column 19, line 10, column 22, lines 6-38, column 33, line 65-column 34, line 20, column 37, lines 39-46, which discloses a calendars used for types of demand);

eliciting from a user a setting that selects one of a plurality of alternative treatments of demand, the setting representing one of a plurality of extents to which the good can be sold out of the presentation quantity between the start date and the stop date (See column 13, lines 27-35, column 18, line 45-column 19, line 10, column 22, lines 6-38, column 33, line 65-column 34, line 20, column 37, lines 39-46, wherein the user specifies treatment of demand, such as by the period being under promotion or not);

forecasting unit inventory and unit sales at a per-item, per-location level using the demand type to identify one or more quantity requirements and, in combination with other data in the event data tuple, to modify quantity requirements during the event (See column 13, lines 1-10 and 27-35, column 18, line 45-column 19, line 10 and lines 48-58, column 55, column 57, lines 13-35, column 109, lines 20-30 and 46-61, which discloses making inventory determinations using the data stored and expected demand impacts); and

generating, from results of the forecasting using the demand calendar consistently across analytical tools, analytical reports that support retailing activities (See column 11, lines 5-16, column 106, lines 60-67, column 107, lines 37-55, column 108, lines 15-25 and 33-45, column 109, lines 45-60, which disclose generating reports).

However, Huang et al. does not expressly disclose that the retail events with demand types and quantity requirements are retail presentation events having presentation demand types that impact presentation quantity requirements or that the demand calendar is a presentation demand calendar.

Landvater discloses retail presentation events having presentation demand types that impact presentation quantity requirements or that the demand calendar is a presentation demand calendar (See figures 14, 15, 18, and 22, column 6, lines 45-60, column 8, lines 15-38, column 14, lines 25-50, column 17, lines 45-57, column 19, lines 9-17, and column 21, lines 15-25, wherein a presentation demand calendar is used with the forecasting program to determine stock and replenishment for each of the retail locations. Schedules of dates associated with presentations, replenishments, etc. are stored in the system. The products are stored on a per product per location basis (i.e. identifying the retail store and product to be at that retail store). Shelf configurations (i.e. presentation treatment) and quantities needed for these configurations are stored in the system with a start date and the next start date for a future configuration, the start date for the future configuration being a stop date for the current configuration).

Both Landvater et al. and Huang et al. are concerned with inventory planning and scheduling and maintaining enough inventory to meet the needs of retail events. Landvater specifically discloses the retail events of displays/presentations with presentation demand quantities for maintaining the displays, as well as different types of display (i.e. different shelf configurations and shelves versus floor models). Landvater stores information concerning these presentations and displays in the system. It would have been obvious to one of ordinary skill in the art at the time of the invention to include presentations as retail events of Huang et al. that

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require inventory considerations in order to more accurately calculate the inventory needed to maintain attractive displays by ensuring the capacity of the displays is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

As per claim 127, Huang et al. does not expressly disclose and Landvater et al. discloses: modeling with a schedule of display types, which is a data structure stored in computer readable memory, display types and capacities in the plurality of locations, the schedule of displays identifiers for a plurality of types and quantities of the displays present at particular selling locations (Landvater discloses a number of shelf configurations, shelves versus floor displays, and storing information concerning the shelves and displays in the system. See figures 14, 15, 18, and 22, column 6, lines 45-60, column 8, lines 15-38, column 14, lines 25-50, column 17, lines 45-57, column 19, lines 9-17, and column 21, lines 15-25, wherein schedules of dates associated with presentations, replenishments, etc. are stored in the system. The products are stored on a per product per location basis (i.e. identifying the retail store and product to be at that retail store). Shelf configurations (i.e. presentation type) and quantities needed for these configurations are stored in the system, wherein the start date is stored, as well as the next start date for a future configuration, and thus the stop date of a current configuration. Further, display types are discussed, such as a shelf or a floor model);

associating particular presentation events with use of particular display types to display particular items; and deriving at least some of the presentation quantity requirements from the use of the particular display types to display the particular items (See column 14, lines 25-58, wherein different displays are scheduled, such as shelves and floor models. See also figures 14, 15, 18, and 22, column 6, lines 45-60, column 8, lines 15-38, column 17, lines 45-57, column 19,

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lines 9-17, and column 21, lines 15-25, wherein schedules of dates associated with presentations, replenishments, etc. are stored in the system. The products are stored on a per product per location basis (i.e. identifying the retail store and product to be at that retail store). Shelf configurations (i.e. presentation type) and quantities needed for these configurations are stored in the system, wherein the start date is stored, as well as the next start date for a future configuration, and thus the stop date of a current configuration. Further, display, types are discussed, such as a shelf or a floor model).

However, while Landvater discloses a number of shelf configurations, shelves versus floor displays, and storing information concerning the shelves and displays in the system, Landvater does not expressly disclose that the displays and display types are specific display fixtures including fixture identifiers, fixture types, and quantities of fixtures.

Landvater et al. and Huang et al. are analogous and combinable for the reasons set for in claim 126. Further, Landvater discloses alternative treatments of presentation demand (i.e. different shelf configurations) as well as different types of display (shelves and floor models). Landvater stores information concerning these presentations and displays in the system. Examiner points out that different fixtures types and the scheduling of different fixture types for store resets and remodels are well-known in the retail industry. Examiner further points out the recitation of display fixtures is non-functional data since the data is merely being stored, and therefore the system is capable of storing such data, regardless of what the data represents. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include data representing the fixtures and fixture types in the data already stored by Landvater concerning displays, shelves, and capacities associated with their presentation in order

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to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

As per claim 120, Huang et al. teaches a retail events with demand types at selling locations, the demand types used by the forecasting unit to determine inventory levels (See column 13, lines 27-35, column 18, line 45-column 19, line 10, column 22, lines 6-38, column 33, line 65-column 34, line 20, column 37, lines 39-46, which discloses a calendars used for types of demand. See column 13, lines 1-10 and 27-35, column 18, line 45-column 19, line 10 and lines 48-58, column 55, column 57, lines 13-35, column 109, lines 20-30 and 46-61, which discloses making inventory determinations using the data stored and expected demand impacts).

However, Huang et al, does not expressly disclose that the demand type selected causes a presentation quantity to be the average presentation quantity for the location during a predetermined selling period.

Landvater teaches a presentation demand type affects the presentation quantity needed (See column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 19, lines 5-17) as well-as using average demands by the forecasting program (See column 10, lines 50-67). However, Landvater does not expressly disclose that the presentation quantity used is the average presentation quantity for the location during the predetermined selling period.

Both Landvater et al. and Huang et al. are concerned with inventory planning and scheduling and maintaining enough inventory to meet the needs of retail events. Landvater specifically discloses the retail events of displays/presentations with presentation demand

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quantities for maintaining the displays, as well as different types of display (i.e. different shelf configurations and shelves versus floor models). Landvater stores information concerning these presentations and displays in the system. It would have been obvious to one of ordinary skill in the art at the time of the invention to include presentations as retail events of Huang et al. that require inventory considerations in order to more accurately calculate the inventory needed to maintain attractive displays by ensuring the capacity of the displays is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

Landvater discloses time phased replenishments based on inventory needs at specific times, such as the number of items needed for displays. Landvater specifically discloses using average demands to plan for inventory. Examiner takes official notice that retailers, when planning for a display, plan inventory to fully maintain the display over its time period of use. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the number of items needed to fill the display as the average presentation quantity needed to support a presentation over a time period in order to more efficiently maintain attractive displays by more accurately calculating the needed stock to support the display during the display period. See column 14, lines 25-35 and 55-65 of Landvater.

As per claims 121-124, Huang et al. teaches a retail events with demand types at selling locations, the demand types used by the forecasting unit to determine inventory levels (See column 13, lines 27-35, column 18, line 45-column 19, line 10, column 22, lines 6-38, column 33, line 65-column 34, line 20, column 37, lines 39-46, which discloses a calendars used for types of demand. See column 13, lines 1-10 and 27-35, column 18, line 45-column 19, line 10

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and lines 48-58, column 55, column 57, lines 13-35, column 109, lines 20-30 and 46-61, which discloses making inventory determinations using the data stored and expected demand impacts).

However, Huang et al, does not expressly disclose that the demand type selected causes a presentation quantity to be the following:

As per claim 121, Landvater teaches wherein the presentation demand type selected causes the presentation quantity used by the forecasting program to be the presentation quantity for the selling location on the first day of the predetermined selling period (See column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 19, lines 5-17, wherein the start date is explicitly stored and on this data the presentation quantity of items is need to support the display. See also column 6, lines 45-60, column 17, lines 45-57, and column 21, lines 15-25).

As per claim 122, Landvater teaches wherein the presentation demand type selected causes the presentation quantity used by the forecasting program to be the presentation quantity on the day of the predetermined selling period when the good is received at the selling location (See column 3, lines 33-57, column 8, lines 25-40, column 14, lines 25-50, column 15, lines 10-25, column 18, lines 30-50 and line 63-column 19, line 17, wherein the quantity needed for the display is known to the system and the replenishment shipments arrive so that inventory is at the needed level for supporting the display).

As per claim 123, Landvater discloses wherein the presentation demand type selected causes the presentation quantity used by the forecasting program to be the largest presentation quantity associated with the good at the selling location for any day of the predetermined selling period (See column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25,

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column 19, lines 5-17, wherein the number of items needed for the presentation/display of the good is the largest quantity displayed. See also column 6, lines 45-60, column 17, lines 45-57, and column 21, lines 15-25).

As per claim 124, Landvater discloses wherein the presentation demand type selected causes the presentation quantity used by the forecasting program to be the larger of the presentation quantities or the projected demand requirements for the good at the selling locations (See column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 19, lines 5-17, wherein the number of items needed for the presentation/display of the good is the largest quantity displayed. See also column 6, lines 45-60, column 17, lines 45-57, and column 21, lines 15-25. Safety stock will also be held based on the forecasts, if needed).

Both Landvater et al. and Huang et al. are concerned with inventory planning and scheduling and maintaining enough inventory to meet the needs of retail events. Landvater specifically discloses the retail events of displays/presentations with presentation demand quantities for maintaining the displays, as well as different types of display (i.e. different shelf configurations and shelves versus floor models). Landvater stores information concerning these presentations and displays in the system. It would have been obvious to one of ordinary skill in the art at the time of the invention to include presentations as retail events of Huang et al. that require inventory considerations in order to more accurately calculate the inventory needed to maintain attractive displays by ensuring the capacity of the displays is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

As per claim 125, Huang et al. teaches a retail events with demand types at selling locations, the demand types used by the forecasting unit to determine inventory levels (See

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column 13, lines 27-35, column 18, line 45-column 19, line 10, column 22, lines 6-38, column 33, line 65-column 34, line 20, column 37, lines 39-46, which discloses a calendars used for types of demand. See column 13, lines 1-10 and 27-35, column 18, line 45-column 19, line 10 and lines 48-58, column 55, column 57, lines 13-35, column 109, lines 20-30 and 46-61, which discloses making inventory determinations using the data stored and expected demand impacts).

However, Huang et al, does not expressly disclose that the demand type selected causes a presentation quantity to be the presentation quantity for the selling location on the last day of a predetermined selling period.

Landvater teaches wherein the presentation demand type selected causes the presentation quantity used by the forecasting program to be the presentation quantity for the selling location on a specific day of the selling period (See column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 19, lines 5-17, wherein the start date is explicitly stored and on this data the presentation quantity of items is need to support the display. See also column 6, lines 45-60, column 17, lines 45-57, and column 21, lines 15-25).

However, Landvater does not expressly disclose that this specific day is the last day of the predetermined selling period.

Both Landvater et al. and Huang et al. are concerned with inventory planning and scheduling and maintaining enough inventory to meet the needs of retail events. Landvater specifically discloses the retail events of displays/presentations with presentation demand quantities for maintaining the displays, as well as different types of display (i.e. different shelf configurations and shelves versus floor models). Landvater stores information concerning these presentations and displays in the system. It would have been obvious to one of ordinary skill in

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the art at the time of the invention to include presentations as retail events of Huang et al. that require inventory considerations in order to more accurately calculate the inventory needed to maintain attractive displays by ensuring the capacity of the displays is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

Further, Landvater teaches a reorder point that is based on a specified time and number of items needed by a store and/or to support a display. Landvater specifically discloses that the specified time is the first day of a selling period. Examiner takes official notice that it is old and well known in inventory scheduling and management to have plans for inventory levels for every day and period through out the year, such as the day one wishes to stock out an item. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to specify the inventory level needed for any specific day in the system in order to more efficiently maintain attractive displays by more accurately calculating the needed stock to support the display during the display period. See column 14, lines 25-35 and 55-65 of Landvater.

### ***Response to Arguments***

10. Applicant's arguments with regards to the finality of the office action dated April 3, 2007 have been fully considered, but at moot due to the fact that a request for continued examination was filed on 08/03/2007.

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11. Applicant's arguments with regards to the rejections based on Landvater (U.S. 6,609,101) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that (1) Landvater does not teach six alternative logics that result in different levels of selling merchandise out of displays, (2) a shelf configuration in Landvater is not equivalent to a presentation demand selector that selects one of a plurality of extents to which the good can be sold out of the presentation quantity between the start and stop date, (3) As per claim 121, Landvater does not teach or suggest forecasting for each and every day of the predetermining selling period, not just the first day and Landvater makes no hint at treating presentation demand in this way, and further examiner's proposed official notice teaches away from our claim 121, (4) as per claim 122, Landvater does not teach or suggest using presentation demand from promotions, (5) as per claim 123, Landvater does not teach or suggest allowing protecting the highest presentation quantity during a predetermined selling period, (6) as per claims 2-3, Landvater teaches away from implicitly storing a start date and Applicant requests a declaration or documentary evidence to overcome Landvater's teaching away, (7) The official notice with respect to claim 120 is not true and that the cited references do not remedy the problem and do not teach presentation quantities, (8) as per claim 125, the official notice contradicts Landvater, which is not allowed.

In response to argument (1), Examiner points out that these claims have been amended and now depend from claim 126, which is rejected over Huang et al. in view of Landvater. Claim 126 recites "eliciting from a user a setting for the presentation demand type selector for the retail presentation event, the setting representing one of a plurality of extents to which the good can be sold out". Therefore, claim 126 does not require six alternative logics that result in

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different levels of selling merchandise out of displays, but rather one of a plurality (i.e. two or more) “extents to which the good can be sold out”. The approaches recited in claims 120-125 are not dependent on each other, but are instead each individually dependent on claim 126. Therefore, there is no scope of the claims where all of the limitations of claims 120-125 are required in claim 126.

As per claim 120-125, the secondary reference of Landvater was relied upon to teach most of these limitations (see rejections above)

As per claim 120, this will be addressed below with respect to argument (7).

As per claim 121, Landvater does teach that the presentation quantity used by the forecasting program is the presentation quantity for the selling location on the first day of the predetermined selling period. See column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 19, lines 5-17. A start date is explicitly stored and on this date the presentation quantity of items is need to support the display. See also column 6, lines 45-60, column 17, lines 45-57, and column 21, lines 15-25.

As per claim 122, Landvater teaches that the presentation quantity used by the forecasting program is the presentation quantity on the day of the predetermined selling period when the good is received at the selling location. See column 3, lines 33-57, column 8, lines 25-40, column 14, lines 25-50, column 15, lines 10-25, column 18, lines 30-50 and line 63-column 19, line 17, wherein the quantity needed for the display is known to the system and the replenishment shipments arrive so that inventory is at the needed level for supporting the display.

As per claim 123, Landvater discloses that the presentation quantity used by the forecasting program is the largest presentation quantity associated with the good at the selling

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location for any day of the predetermined selling period. See column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 19, lines 5-17, wherein the number of items needed for the presentation/display of the good is the largest quantity displayed. See also column 6, lines 45-60, column 17, lines 45-57, and column 21, lines 15-25. The largest number needed for the display would be the number of products needed to support the display, such as is required on the first day of the display. Therefore, the first day is any day in the claim.

As per claim 124, Landvater discloses that the presentation quantity used by the forecasting program is the larger of the presentation quantities or the projected demand requirements for the good at the selling locations. See column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 19, lines 5-17, wherein the number of items needed for the presentation/display of the good is the largest quantity displayed. See also column 6, lines 45-60, column 17, lines 45-57, and column 21, lines 15-25. Safety stock will also be held based on the forecasts, if needed. In short, the system attempts to maintain an attractive display using the largest number needed for the display (which would be the number of products needed to support the display, such as is required on the first day of the display) or the number required to make up for the demand/removal of products. These figure in to the inventory requirements.

Claim 125 will be addressed below with respect to argument (8).

In response to argument (2), Examiner respectfully disagrees. Claim 1 recites “a presentation demand selector that selects one of a plurality of extents to which the good can be sold out”, which means that a way to sell the good is selected. Landvater discloses selecting in the system different stored shelf configurations and quantities needed for these configurations. Therefore, a shelf configuration is chosen as a way to present and sell a good for a given time

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period as selected by a user. See column 8, lines 15-38, column 14, lines 25-50, column 17, lines 45-57, column 19, lines 9-17, and column 21, lines 15-25, wherein a presentation demand calendar is used. Shelf configurations (i.e. presentation treatment) and quantities needed for these configurations are stored in the system with a start date and the next start date for a future configuration, the start date for the future configuration being a stop date for the current configuration

In response to argument (3), Examiner respectfully disagrees. Claim 121 was rejected under 35 USC 102 as being anticipated by Landvater. In claim 121, Examiner asserted that Landvater teaches that the presentation demand type selected causes the presentation quantity used by the forecasting program to be the presentation quantity for the selling location on the first day of the predetermined selling period. This is specifically taught in column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 19, lines 5-17, wherein the start date is explicitly stored and on this data the presentation quantity of items is need to support the display.

As to examiner's official notice teaching away from claim 121, Applicant is discussing the official notice taken with respect to claim 120. In claim 120, Examiner took official notice that "retailers, when planning for a display, plan inventory to fully maintain the display over its time period of use". Examiner notes that claims 120 and 121 are alternative ways to treat display inventory. Therefore, the official notice does not teach away from Landvater, but rather teaches an alternative way to treat display inventory. However, Examiner reminds applicant that Landvater anticipates claim 120.

In response to arguments (4) and (5), these are addressed above with respect to argument (1).

In response to argument (6), Applicant has attempted to challenge the Examiner's taking of Official Notice. There are minimum requirements for a challenge to Official Notice:

(a) In general, a challenge, to be proper, must contain adequate information or arguments so that *on its face* it creates a reasonable doubt regarding the circumstances justifying the Official Notice

(b) Applicants must seasonably traverse (challenge) the taking of Official Notice as soon as practicable, meaning the next response following an Office Action. If an applicant fails to seasonably traverse the Official Notice during examination, his right to challenge the Official Notice is waived.

With regards to claim 2-3, Examiner notes that applicant failed to seasonably challenge this official notice, as it was first presented in the office action of 2/15/2006. Since this office action, a response was submitted by applicant on 7/14/2006 and another office action was issued by examiner on 09/27/2006. Therefore, the current traversal is not timely.

In response to argument (7), Examiner respectfully disagrees. Examiner took official notice that retailers, when planning for a display, plan inventory to fully maintain the display over its time period of use.

The references provided by examiner in support of this official notice do explicitly teach this feature. Roden et al. (U.S. 6,249,774), expressly discloses inventory management and maintaining inventory needed to restock store shelves in at least column 1, line 63-column 2, line 15 and lines 45-60, and column 8, lines 30-50. Being able to restock a shelf is planning for the

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display over the period of its use. Further, Kimbrow (U.S. 4,737,910) in at least column 1, lines 55-67, discloses reordering inventory to maintain a sufficient amount of inventory between a maximum and minimum acceptable level. Again, this is to accomplish fully maintaining a display over its display period.

In response to argument (8), Examiner respectfully disagrees. Because Landvater teaches one alternative does not mean that there are not other alternatives known in the art to accomplish the same purpose. Landvater does teach that the presentation quantity used by the forecasting program is the presentation quantity for the selling location on a specific day of the selling period. See column 8, lines 7-21 and 25-40, column 14, lines 25-67, column 15, lines 10-25, column 19, lines 5-17, wherein the start date is explicitly stored and on this data the presentation quantity of items is need to support the display. See also column 6, lines 45-60, column 17, lines 45-57, and column 21, lines 15-25. Landvater also stores the date of the next display. Therefore, Landvater does store explicit dates. Examiner takes official notice that it is old and well known in inventory scheduling and management to have plans for inventory levels for ever day and period through out the year, *such as the day one wishes to stock out an item*. Therefore, since Landvater stores certain dates explicitly, it is not contradictory to store a different date, such as a stockout date, explicitly.

12. Applicant's arguments with regards to the rejections based on Huang et al. (U.S. 6,151,582) in view of Landvater have been fully considered, but they are not persuasive. In the remarks, Applicant argues that (9) as per claim 126, Examiner states that Huang includes everything and then acknowledges that Huang teaches virtually none of the claim elements, (10)

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Huang does not teach or suggest using store specific data, (11) Huang does not teach or suggest the use of simulation, (12) The proposed modification in claim 126 changes the principle of operation of the reference because switching from bulk customer forecast data to simulating sales at individual customer stores would further change Huang's principle operation, (13) there is no evidence of record that one of skill in the art would attempt to combine a manufacturer's manufacturing system with a retailer's retail planning system and further the details of Landvater would not even be considered by one of ordinary skill in the art

In response to argument (9), Examiner disagrees with Applicant's characterization of her rejections. Applicant states that "Examiner's form of argument is first to assert that every limitation of the claim is met by Huang, then to contradict herself by admitting at least some of what Huang lacks". Examiner respectfully requests applicant to reread the rejections set forth above. Examiner clearly states that "Huang et al. does not expressly disclose that the retail events with demand types and quantity requirements are retail presentation events having presentation demand types that impact presentation quantity requirements or that the demand calendar is a presentation demand calendar". This piece was not asserted as taught by Huang in the rejections set forth by the Examiner. Therefore, examiner did not assert that everything is taught by Huang and examiner is further unclear as to what the Applicant is trying to establish by their assertions.

In response to argument (10), Examiner respectfully disagrees. First, Huang et al. teaches selling location identifiers in at least column 13, lines 27-35, column 18, line 45-column 19, line 10, column 22, lines 6-38, column 33, line 65-column 34, line 20, column 37, lines 39-46, which discloses a calendars used for types of demand. This identifier is not explicitly used in

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the claim; rather it is included in the calendar and the tuple. Later in the claim, forecasting occurs based on the presentation demand selector in combination with other data in the presentation event data tuple. This other data does not expressly have to include the selling location. The only other place that specific store data is recited is in the limitation “forecasting [...] at a per-item, per-selling location level”, which implies that the forecasting is done at a higher level than the retail level (i.e. by a person with access to data of each location and item). Again, see column 13, lines 27-35, column 18, line 45-column 19, line 10, column 22, lines 6-38, column 33, line 65-column 34, line 20, column 37, lines 39-46, where store data is used in inventory considerations.

In response to argument (11), Examiner points out that claim 126 only recites simulated in the preamble of the claim. None of the positively recited steps in the body of the claim include simulating. It is noted that the features upon which applicant relies (i.e., simulation aspects) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Huang does teach and suggest modeling, forecasting, etc. as set forth above. If some specific aspect of simulation is required in the body of the claims, examiner respectfully suggests adding these features to ensure that they are afforded appropriate patentable weight.

In response to argument (12), Examiner respectfully disagrees. Huang teaches considering the inventory needs of individual stores and inventory replenishment for these stores. Landvater specifically discloses multiple retail and using product/location data to make forecast decisions for the retail stores. The needs of the individual sites in the system of Huang are

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calculated at those sites using systems such as those taught by Landvater. See column 17, lines 35-57, column 19, lines 5-17, of Landvater that disclose the unique and specific needs of specific locations in the supply chain. Therefore, there is no change in the principle operation of Huang, which is to supply inventory to sites based on historical data and future performance goals.

In response to argument (13), Examiner respectfully disagrees. Huang et al. specifically discloses retail outlets and using a promotional calendar that considers type of promotion, promotion dates, impact of promotion, etc. Landvater specifically discloses multiple retail stores in the supply chain, and using product/location data to make forecast decisions. The needs of the individual sites in the system of Huang are calculated at those sites using systems such as those taught by Landvater. See column 17, lines 35-57, column 19, lines 5-17, of Landvater that disclose the unique and specific needs of specific locations in the supply chain.

Examiner reminds applicant that KSR forecloses the argument that a specific teaching, suggestion, or motivation is required to support the finding of obviousness.

13. Applicant's arguments with regards to the rejections based on Landvater in view of Display Unlimited ([www.displayunlimited.com](http://www.displayunlimited.com)) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that (14) Display Unlimited does not qualify as a reference because it does not have any attributes of technology and does not provide an enabling disclosure, and examiner conceded that Display Unlimited does not teach or suggest designing an inventory program and (15) Landvater does not support a single reference 35 USC 103 rejection for 116.

In response to argument (14), Examiner respectfully disagrees.

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As to Applicant's assertion that Display Unlimited does not qualify as a reference because it does not have any attributes of technology, Examiner respectfully disagrees.

Examiner points out that Display Unlimited is a Nonpatent Publication. All printed publications may be used as references as per MPEP 901.06. Further, as per MPEP 2128, an electronic publication, including an on-line database or Internet publication, is considered to be a "printed publication" within the meaning of 35 U.S.C. 102(a) and (b) provided the publication was accessible to persons concerned with the art to which the document relates. See *In re Wyer*, 655 F.2d 221, 227, 210 USPQ 790, 795 (CCPA 1981). Examiner is not clear where the MPEP states that a Nonpatent Publication is required to have attributes of technology. Therefore, examiner respectfully requests that the Applicant sites the specific sections of the MPEP that require a Nonpatent Publication to have attributes of technology in order to qualify as prior art.

As to Applicant's argument that Display Unlimited does not provide an enabling disclosure, Examiner also respectfully disagrees. As per MPEP 2121, Prior art is presumed to be operable/enabled when the reference relied on expressly anticipates or makes obvious all of the elements of the claimed invention. Once such a reference is found, the burden is on applicant to provide facts rebutting the presumption of operability. *In re Sasse*, 629 F.2d 675, 207 USPQ 107 (CCPA 1980). Display Unlimited was relied upon to teach different display fixture types used in retail environments and using these fixture types to design layouts of stores in retail environments (See pages 2-3, page 4, section 1, and page 5, section 1, which discloses fixture types and layouts of stores with multiple elements). Display Unlimited specifically discloses a consulting service that aids a retailer in designing and arranging displays and fixture types at his/her sales location. Therefore, the art is enabled to show different types of fixtures and a third

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party consulting service that aides retailers in arranging these fixtures in a sales location.

Applicant continues to mischaracterize the teachings of Display Unlimited and has not provided sufficient facts rebutting that Display Unlimited discloses display fixtures and consulting services.

Finally, examiner agrees that Display unlimited was not relied on to teach designing an inventory program. Display Unlimited discloses a consulting service that aids a retailer in designing and arranging displays and fixture types at his/her sales location. This reference was merely relied on to teach different display fixture types and using these fixture types to design layouts of stores in retail environments (See pages 2-3, page 4, section 1, and page 5, section 1, which discloses fixture types and layouts of stores with multiple elements). Landvater discloses a computer-based system that stores information about shelves and the setup of these shelves, as well as floor displays (even if the display is one bed), to track in the system the need for product reorders. Therefore, the shelf configurations (ie number of facings and number of shelves) are used to determine the amount of stock needed to fill the display, by the system. Since the system of Landvater is capable of storing displays in memory and Display Unlimited discloses types of displays that were being used by retail stores, the display types of Display Unlimited would be able to be stored in the system of Landvater to accomplish the same end result - establishing demand for products and product stocks needed to support the display.

In response to argument (15), Examiner points out that a single reference 35 USC 103 rejection in view of solely Landvater was not relied on to reject claim 116. As set forth above, claim 116 was rejected under 35 U.S.C. 103(a) as being unpatentable over Landvater (U.S. 6,609,101) in view of Display Unlimited ([www.displayunlimited.com](http://www.displayunlimited.com)). Therefore, the argument

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that Landvater does not support a single reference 35 USC 103 for claim 116 is irrelevant based on the rejections set forth below.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is 571-272-6737. The examiner can normally be reached on M-F, 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Bvd*  
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October 5, 2007

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